

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO.: 9:22-cv-81780-MIDDLEBROOKS/MATTHEWMAN

DONALD J. TRUMP,

Plaintiff,

v.

LETITIA JAMES,

Defendant.

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**PARTIALLY AGREED MOTION FOR EXTENSION OF TIME TO  
RESPOND TO AMENDED COMPLAINT AND TO PLAINTIFF'S  
"EMERGENCY" MOTION FOR INJUNCTION**

Defendant Letitia James, Attorney General of the State of New York ("Attorney General James"), by and through her undersigned counsel and pursuant to Federal Rule of Civil Procedure 6(b), hereby respectfully requests (a) an extension of time, up to and including December 16, 2022 to file a motion to dismiss the Amended Complaint (D.E. 1-1 at 56) filed by Plaintiff, Donald J. Trump ("Plaintiff"), and (b) an extension of time to serve her opposition to Plaintiffs' "Emergency"<sup>1</sup> Motion for Temporary Injunction ("Motion for Temporary Injunction") (D.E. 1-1 at 113). In support of this motion, Attorney General James states:

1. On November 2, 2022 Plaintiff filed a Complaint (the "Initial Complaint") in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida Civil Division, Case No. 2022-CA-10792 (the "State Court Action"). Plaintiff did not serve Attorney General James with process or with the Initial Complaint. (D.E. 1-1 at 11)

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<sup>1</sup> For the avoidance of doubt, the Motion for Temporary Injunction does not, and cannot, comply with Southern District of Florida Local Rule 7.1(d).

2. Thereafter, on November 15, 2022, Plaintiff filed an Amended Complaint in the State Court Action, as well as the Motion for Temporary Injunction. Plaintiff has not served Attorney General James with either the Amended Complaint or the Motion for Temporary Injunction.

3. Although Attorney General James had not been served with any process, pleadings, or orders in the State Court Action, Attorney General James became aware of the Amended Complaint and the Motion for Temporary Injunction on November 16, 2022 and immediately filed a Notice of Removal (D.E. 1) effectuating the removal of the State Court Action to this Court based on original federal subject matter jurisdiction and complete diversity of citizenship pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446.

4. Notwithstanding that Attorney General James still has not been served with any process, pleadings, or orders, it appears that Attorney General James' response to the Amended Complaint is due on December 7, 2022 pursuant to Federal Rule of Civil Procedure 81(c)(2), and that Attorney General James' opposition to the Motion for Temporary Injunction is due on November 30, 2022 pursuant to Southern District of Florida Local Rule 7.2.

5. For the avoidance of doubt, Attorney General James will be moving to dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b), including, without limitation, specifically under Rule 12(b)(2) due to the lack of personal jurisdiction. *See, e.g., Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 488 (5th Cir. 2008) ("Federalism and state sovereignty are an essential part of the constraints that due process imposes upon personal jurisdiction," and they prevent a federal district court from exercising personal jurisdiction "over a nonresident state official."); *see also, e.g., Trump v. Committee on Ways and Means, U.S. House of Representatives*, 415 F. Supp. 3d 98 (D.D.C. 2019) (finding lack of personal jurisdiction over

New York state officials, including Attorney General James).

6. In addition to the lack of personal jurisdiction, given the breadth of the allegations levied in the Amended Complaint, as well as the intervening Thanksgiving Holiday, Attorney General James respectfully requests additional time within which to fully and completely analyze and prepare the motion to dismiss the Amended Complaint, which includes purported claims under the U.S. Constitution pursuant to 42 USC § 1983 and the Florida Constitution, and purports to seek declaratory and injunctive relief, as well as damages “(1) potentially as high as \$250,000,000 in confiscation from the civil action; (2) legal fees and costs incurred in defending against the campaign of retaliation; (3) and other damages in an amount to be proven at trial.” *See* D.E. 1-1 at 56, Amended Complaint at ¶ 120; *see also id.* at ¶ 9 (Plaintiff “seeks. . . compensatory damages up to \$250,000,000”).

7. To that end, Attorney General James respectfully requests a brief 9-day extension of time, up to and including December 16, 2022, within which to file her motion to dismiss the Amended Complaint.

8. Moreover, with respect to the Motion for Temporary Injunction, given the Court’s obvious lack of personal jurisdiction, as will be set forth fully in Attorney General James’ motion to dismiss, along with other bases for dismissal (including without limitation sovereign immunity,<sup>2</sup>

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<sup>2</sup> *See Franchise Tax Board of California v. Hyatt*, \_\_ U.S. \_\_, 139 S. Ct. 1485, 1492, 1499 (2019) (holding federal constitution bars private suits against a state in the courts of other states); *Stroud v. McIntosh*, 722 F.3d 11294, 21302 (11th Cir. 2013) (holding removal by a state does not “waive[] any defense it would have enjoyed in state court,” including “other aspects of sovereign immunity” independent of the Eleventh Amendment) (quoted in *Page v. Hicks*, 773 F. App’x 514, 518 (11th Cir. 2019)).

absolute prosecutorial immunity,<sup>3</sup> and failure to state a claim based on multiple grounds<sup>4</sup>), Attorney General James respectfully requests that, in the event the action is not dismissed, the Court extend the deadline to respond in opposition to the Motion for Temporary Injunction until 10 days *after* the entry of an order adjudicating Attorney General James' motion to dismiss under Rule 12(b), so as to avoid unnecessary attorneys' fees and costs, and to avoid burdening the Court with unnecessary briefing, in the event the action is dismissed. In the alternative, Attorney General James respectfully requests a 16-day extension of time, up to and including December 23, 2022, within which to serve the opposition to the Motion for Temporary Injunction. Attorney General James' request is particularly appropriate given that under the current deadlines, the opposition to the Motion for Temporary Injunction is due before the response to the Amended Complaint, which would be Attorney General James' first opportunity to contest personal jurisdiction and raise other meritorious grounds for dismissal.

9. The requested extensions of time are sought in good faith, for good cause as set forth above, and are particularly reasonable given that Attorney General James was not served with service of process.

#### **Local Rule 7.1(a)(3) CERTIFICATE OF GOOD FAITH CONFERENCE**

Pursuant to Local Rule 7.1(a)(3)(A), undersigned counsel for the movant certifies that she has conferred with counsel for Plaintiff, Timothy Weber, in a good faith effort to resolve the issues

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<sup>3</sup> See *Imbler v. Pachtman*, 424 U.S. 409 (1976) (holding prosecutors are immune from liability for acts that are within the scope of prosecutorial duties); *Cook v. Houston Post*, 616 F.2d 791, 793 (5th Cir. 1980) (the former Fifth Circuit holding *Imbler* immunity extends to a prosecutor's actions in initiating, investigating and pursuing a prosecution).

<sup>4</sup> See, e.g., *Albright v. Oliver*, 510 U.S. 266, 268 (1994) (holding there is no substantive due process right to be free from investigation or even from prosecution on less than probable cause); *Rowe v. City of Fort Lauderdale*, 8 F. Supp. 2d 1369, 1373 (S.D. Fla. 1998) (citing *Albright*).

raised in this motion, and has been able to reach agreement in part but has been unable to fully resolve the issues raised herein. In this regard, Plaintiff **has agreed to** the requested 9-day extension of time, up to and including December 16, 2022, for Attorney General James to file her motion to dismiss the Amended Complaint. (The undersigned also agreed to Plaintiff's counsel's request for an extension for Plaintiff's response to the anticipated motion to dismiss of up to and including January 10, 2023.) Plaintiff **did not agree** to Attorney General James' requested extension of time to respond in opposition to the pending Motion for Temporary Injunction, however, Plaintiff was willing to agree to a one-week extension of time to December 7, 2022.

WHEREFORE, Attorney General James respectfully requests that the Court: (1) grant a 9-day extension of time, up to and including December 16, 2022, within which to file the motion to dismiss the Amended Complaint; (2) extend Attorney General James' deadline to respond in opposition to the pending Motion for Temporary Injunction until 10 days *after* the adjudication of the anticipated motion to dismiss under Rule 12(b) in the event the action is not dismissed, or in the alternative, grant a 16-day extension of time, up to and including December 23, 2022, within which to serve the opposition to the Motion for Temporary Injunction; and (3) grant such other and further relief as the Court may deem just and proper.

Dated: November 23, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing motion was served this 23rd day of November, 2022 upon all counsel of record via CM/ECF.

/s/Melissa Pallett-Vasquez

Melissa Pallett-Vasquez